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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

JOHN WILEY & SONS, INC.,

Plaintiff, Counterclaim Defendant,

v.

DRK PHOTO,

Defendant, Counterclaimant.

CASE NO. 11-CV-05454 (KPF)


**STIPULATION FOR PARTIAL
DISMISSAL WITH PREJUDICE, AND
MOTION FOR ENTRY OF FINAL
JUDGMENT**

IT IS HEREBY STIPULATED, by and between Plaintiff DRK Photo ("DRK") and Defendant John Wiley & Sons, Inc. ("Wiley"), by and through their respective counsel, that the claims in DRK's counterclaims identified at rows 3, 10, 12, 13, 17, 29, 30, 38, 39, 41, 43, 45, 46, 53, 54, 57, 73, 76, 85, 86, 111, 117, 120, 137, 140, 149, 150, 160, 163, 192, 210, 213, 219, 224, 225, 233, 236, 242, 247, 248, 265, 278, 287, 290, 295 in Exhibit 1 to DRK's Answer and Counterclaim (Dkt. No. 26-1, a copy of which is attached as Exhibit A hereto), be and hereby are **DISMISSED WITH PREJUDICE** pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure and a settlement reached by the parties. All appearing parties have signed this stipulation and shall bear their own respective attorneys' fees and costs regarding the claims stipulated herein to be dismissed with prejudice.

The settlement reached by the parties does not affect the remaining claims dismissed by the Court's February 21, 2014 Order. Thus, and in order to permit Plaintiff DRK to appeal the Court's February 21, 2014 Order, the parties respectfully request the Court enter final judgment with respect to the remaining claims dismissed by the Court's Order at Dkt. No. 106.

Dated this 29th day of January, 2015

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Application GRANTED. It is the Court's understanding from the parties' letter that this settlement resolves those claims left open by the Court's oral decision rendered on March 4, 2015, which decision granted the motion for reconsideration with regard to adoption of the discovery rule rather than the injury rule, and denied the motion with regard to statutory standing. (Dkt. #132). Accordingly, the claims identified by the Stipulation are DISMISSED WITH PREJUDICE pursuant to the Stipulation.

The Court further understands that the instances not covered by this settlement are those that the Court previously dismissed for lack of statutory standing, which decision it declined to reconsider. The Court therefore enters final judgment as to those claims, which were previously dismissed without prejudice.

The Clerk of Court is directed to terminate all pending motions, adjourn all remaining dates, and close this case.

Dated: March 11, 2015
New York, New York

SO ORDERED.

A handwritten signature in blue ink, reading "Katherine Polk Failla".

HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE